

FILED BY SP D.C.

05 OCT 31 AM 9:35

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

THOMAS M. COULD
CLERK, U.S. DISTRICT COURT
W/D OF TN, JACKSON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Cr. No. 00-10007-T

CONSTANCE C. DEATON,

Defendant.

ORDER DENYING MOTION FOR CERTIFICATE OF APPEALABILITY

On September 20, 2004, the defendant, Constance C. Deaton, an inmate at the Federal Medical Center in Lexington, Kentucky, filed a pro se motion in this criminal case requesting a certificate of appealability based upon the principles enunciated in Blakely v. Washington, 124 S. Ct. 2531 (2004). Certificates of appealability are required for appeals of denied motions to vacate under 28 U.S.C. § 2255.¹ Deaton has not filed a motion to vacate and 28 U.S.C. § 2253(a) has no applicability in this closed criminal case.

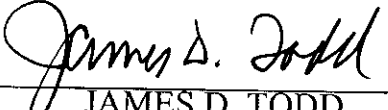
Furthermore, it would be futile to construe the motion as requesting an extension of time to file a notice of appeal.² The Court entered its judgment in this case on July 26, 2000.

¹ Twenty-eight U.S.C. § 2253(a) requires the district court to evaluate the appealability of its decision denying a § 2255 motion and to issue a certificate of appealability only if "the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. 2253(c)(2); see also Fed. R. App. P. 22(b); Lyons v. Ohio Adult Parole Auth., 105 F.3d 1063, 1073 (6th Cir. 1997) (district judges may issue certificates of appealability under the AEDPA). No § 2255 movant may appeal without this certificate.

² Upon a finding of excusable neglect or good cause, the district court may - before or after the time has expired, with or without motion and notice - extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b). Fed. R. App. Proc. 4(b)(4).

Deaton did not appeal. Her conviction was final on August 7, 2000, the last date Deaton could have filed a notice of appeal.³ Accordingly, the motion is DENIED.

IT IS SO ORDERED this 28th day of October, 2005.



JAMES D. TODD
UNITED STATES DISTRICT JUDGE

³ Because August 5, 2003, fell on a Saturday, the deadline was extended until the following Monday, August 7, 2000.



Notice of Distribution

This notice confirms a copy of the document docketed as number 44 in case 1:00-CR-10007 was distributed by fax, mail, or direct printing on November 1, 2005 to the parties listed.

Richard Leigh Grinalds
U.S. ATTORNEY'S OFFICE
109 S. Highland Ave.
Ste. 300
Jackson, TN 38301

Constance C. Deaton
Federal Prison Camp
17172-076
P.O. Box 14525
Lexington, KY 40512--452

Honorable James Todd
US DISTRICT COURT